IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12098 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GEETABEN BHARATBHAI PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 5 - Respondent(s)

==========

Appearance :

MR MEHUL SHARAD SHAH for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1,
MR HS MUNSHAW for Respondent(s) : 2,
RULE SERVED for Respondent(s) : 3 - 5.
MR AM RAVAL for Respondent(s) : 6,

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/11/2005

ORAL JUDGMENT

In the present petition, the petitioner who was an elected Sarpanch of Bechar-Becharaji Gram Panchayat has challenged the resolution of no confidence motion passed

against her on 3rd November 2003. The petitioner has also challenged the order dated 15.9.2004 passed by the Joint Secretary, Panchayat, Rural Housing and Rural Development Department, Government of Gujarat, by which the revision application filed by respondent No.6 against the order passed by the Appeal Committee of the District Panchayat, Mehsana was allowed.

2. Short facts leading to the present petition can be noted at the outset.

2.1 The petitioner was an elected Sarpanch of Bechar-Becharaji Gram Panchayat (hereinafter to be referred to as “the Gram Panchayat”), election for which was conducted on 7th April 2002. The result of the election was declared on 10th April 2002 and the petitioner assumed office of the Sarpanch of the Gram Panchayat on 1st May 2002. A notice of no confidence motion was issued by some of the members of the Panchayat on 6.10.2003. In the said notice which was jointly signed by several members of the Gram Panchayat, it was stated that since the administration of the Gram Panchayat is not being properly conducted, the members wish to bring in a motion of no confidence against

Sarpanch Smt.Geetaben Bharatbhai Patel. The Talati-cum-Mantri upon receipt of the notice of no confidence motion dated 6.10.2003 conveyed to the petitioner about such a proposal asking her to call a meeting of the members of the Panchayat within 15 days. Accordingly, a Special General Meeting was scheduled on 3rd November, 2003 to transact the business of proposal of no confidence motion against the petitioner. On 3.11.2003, the meeting was convened at the office of the Gram Panchayat wherein 17 members of the Panchayat remained present. It is the case of the petitioner that during the meeting without affording an opportunity to the petitioner to speak at the meeting, the Chairman of the meeting i.e. Up-Sarpanch asked the members who were present to indicate their vote by raising their hands. The petitioner opposed the procedure and sought permission to speak at the meeting. She was, however, denied the opportunity to address the members. Eventually, voting took place wherein 14 members cast their votes in favour of no confidence motion and 2 members voted against the motion. It may be noted that the Panchayat comprises of 17 members.

2.2 The petitioner challenged the proceedings of

the meeting dated 3rd November 2003 before this Court by filing Special Civil Application No.15636 of 2003. This Court after issuance of notice to the respondents disposed of the petition on 17th February 2004. In the said order dated 17.2.2004, the learned Judge of this Court noted the rival contentions with respect to the conflicting averments regarding the opportunity being given to the petitioner to speak at the Special General Meeting on 3rd November 2003 and to address the members present. The learned single Judge observed in para 9 of the said order that disputed questions of fact arise in the petition. The question which has to be decided is whether the petitioner was permitted to exercise the right of addressing the members of the Panchayat when the no confidence motion was being discussed. It was observed that unless the said disputed question of fact is decided, the petition cannot be decided and ordinarily disputed questions of fact are not being entertained by this Court. The learned Judge finding that the appeal is maintainable against the resolution passed by the Panchayat relegated the petitioner to appellate remedy and provided that if appeal is filed within 15 days from the date of the order, the appeal shall be entertained on merits and disposed of within a reasonable period of

time.

2.3 The petitioner accordingly preferred an appeal before the Appeal Committee of the District Panchayat, Mehsana. The Appeal Committee considered the rival submissions, examined the material on record and came to the conclusion that the petitioner ought to have been given an opportunity of presenting her case and only thereafter decision should have been taken. The Appeal Committee, therefore, allowed the appeal of the petitioner partially. The resolution of the Gram Panchayat dated 3rd November 2003 was set aside. It was further directed that a fresh meeting be convened in which after hearing the petitioner, through fresh voting decision should be taken.

2.4 Respondent No.6 who was the Up-sarpanch of the Gram Panchayat preferred a revision application before the State Government against the order passed by the Appeal Committee. The State Government allowed the revision application filed by respondent No.6 and the order of the Appeal Committee was set aside. Resolution No.42 dated 3rd November 2003 was restored and effectively the petitioner was ousted from the position of Sarpanch

through the no confidence motion. The petitioner has challenged the resolution through which the no confidence motion was passed as well as the order passed by the State Government by which the order of the Appeal Committee was set aside and resolution dated 3.11.2003 was revived.

3. Learned advocate Shri Shah appearing for the petitioner raised three main contentions.

3.1 Firstly, it was contended that the revision application was not maintainable against the order passed by the Appeal Committee. He contended that the appeal itself was not maintainable and therefore the State Government ought not to have entertained the revision application filed by respondent No.6.

3.2 It was further contended that the petitioner was not allowed to address the meeting held on 3rd November 2003 which resulted into miscarriage of justice. He contended that the Appeal Committee has in terms come to the conclusion that the petitioner was not given an opportunity to address the meeting. He submitted that the State Government has not decided this question and

has erred in setting aside the order passed by the Appellate Committee.

3.3 He further submitted that to address the meeting convened to discuss and to vote on the no confidence motion is the statutory right of the petitioner. He submitted that the petitioner was an elected Sarpanch of the Gram Panchayat. When the issue of no confidence against her was being debated and voted upon by the members, it was necessary that the petitioner should have been permitted to put forth her case before the Panchayat. Reliance was placed in this regard on an interim order passed by the learned single Judge of this Court on 21.9.99 in Special Civil Application No.7159 of 1999.

4. On the other hand, learned advocate Shri Raval appearing for respondent No.6 submitted that the petition should be rejected. He contended that the petitioner cannot question the maintainability of the revision application when he himself filed the appeal as directed by this Court. It is now not open for the petitioner to urge that the appeal itself was not maintainable. Learned advocate Shri Raval further

submitted that out of 17 members of the Panchayat, as many as 14 members have voted against the petitioner and by overwhelming majority, the Panchayat had indicated loss of confidence in the petitioner. He, therefore, submitted that in a democratic process, the petitioner cannot be permitted to continue to discharge her duties as Sarpanch. He contended that the petitioner does not have a vested right to address the meeting before a no confidence motion can be put to vote. He further submitted that it is true that the State Government has not decided the question whether the petitioner was permitted to address the meeting or not, however, even if the petitioner was not given such an opportunity, the same would not vitiate the proceedings of the meeting held on 3rd November 2003.

5. Learned AGP Mr.Gori appearing for the State Government supported the order under challenge. He submitted that the order calls for no interference and the same has been passed after taking into account the material on record.

6. From the above discussion, it can be seen that this Court had relegated the petitioner to the remedy of

appeal primarily on the ground that the question whether the petitioner was allowed to address the meeting or not is a disputed question of fact which can be more conveniently examined by the alternative forum. The Appeal Committee has come to the conclusion that no opportunity was given to the petitioner to address the meeting. This was one of the main grounds which prompted the Appeal Committee to allow the appeal of the petitioner and direct convening of a fresh meeting to discuss the no confidence motion. Respondent No.6 petitioned against the appellate order of the Appeal Committee before the State Government. The State Government allowed the revision application without deciding the vital question whether the petitioner was in fact granted an opportunity to address the meeting and to speak. I had, at the outset, therefore, offered to the learned advocates appearing for the parties whether the proceedings should be remanded to the State Government for fresh consideration. Learned advocate Shri Raval, however, submitted that remanding the proceedings would prolong the issue and the Court may proceed on the basis that the finding of the Appeal Committee on the question of opportunity not being given to the petitioner to address the meeting has achieved

finality and that there is no decision of the State Government on this aspect of the matter. In view of this suggestion and concession, I have heard the learned advocates at considerable length about the legal issues arising.

7. Thus having achieved clarity about the factual controversy whether the petitioner was allowed to address the meeting on 3rd November 2003 or not, I would like to proceed to consider the legal aspects of the matter. In other words, it would emerge that the petitioner was not given an opportunity to address the meeting of 3rd November 2003. This Court therefore would have to consider as to what would be the legal fall out of such a situation.

8. Before getting down to decide the effect of an opportunity being denied to the petitioner to address the meeting, I would like to deal with and dispose of the contention raised by the learned advocate for the petitioner that the revision application filed by respondent No.6 before the State Government was not maintainable. It was urged by the learned advocate for the petitioner that the appeal itself was not

maintainable against the resolution dated 3rd November 2003. He therefore contended that when the appeal was not maintainable before the Appeal Committee, no further revision would be maintainable and on this ground itself the order passed by the State Government should be quashed. I am afraid, such a contention cannot be upheld. This Court by an order dated 17.2.2004 passed in Special Civil Application No.15636 of 2003 filed by the present petitioner held that appeal would be maintainable against the resolution passed by the Panchayat. The petitioner has not challenged this finding arrived at by the learned single Judge and in fact availed of the remedy of appeal. Not only the petitioner filed appeal, but also succeeded substantially in the said appeal filed before the Appeal Committee of the District Panchayat. It, therefore, does not lie in the mouth of the petitioner to contend that the revision application was not maintainable since the appeal itself was not maintainable under the law.

9. Reverting to the question of legal implication of the petitioner being denied the opportunity of addressing the meeting which was held on 3rd November, 2003, it would be necessary to note some of the statutory

provisions relevant for the above purpose.

10. Article 243E of the Constitution provides for the duration of Panchayats and provides, inter alia, that every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

10.1 Section 9 of the Gujarat Panchayats Act, 1993 (hereinafter to be referred to as “the said Act”) provides for the constitution of village panchayats. Clause (a) of sub-section (3) of section 9 of the said Act provides that a village panchayat shall have a Sarpanch and an Upa-Sarpanch. Clause (b) of sub-section (3) of section 9 provides that the Sarpanch shall be elected by ballot by the qualified voters of the village from amongst themselves. Clause (c) of sub-section (3) section 9 provides that Upa-Sarpanch shall be elected by the members of the village panchayat from amongst themselves.

10.2 Section 51 of the said Act, inter alia, provides that on the constitution of a village panchayat

or on its reconstitution under section 13 or under any other provision of the Act, there shall be called the first meeting of the Panchayat for the election of Up-Sarpanch from amongst the members of the panchayat. Section 53 of the said Act provides that save as otherwise provided in the Act, the term of office of the members of a village Panchayat and the Sarpanch and Upa-Sarpanch of a village panchayat shall be co-extensive with the duration of the panchayat. Section 55 of the said Act provides for executive functions of Sarpanch or Upa-Sarpanch. Sub-section (2) of section 55 in particular provides that the Sarpanch shall preside over and regulate the meetings of the Panchayat.

10.3 Section 56 of the said Act provides for motion of no confidence. Sub-section (1) of section 56 provides that any member who intends to move a motion of no confidence against the Sarpanch or Upa-Sarpanch may give notice thereof in the prescribed form to the Panchayat concerned and if the notice is supported by one half of the total number of members of the panchayat concerned, the motion may be moved. Sub-section (2) of section 56 provides that where a motion is carried against the Sarpanch or, as the case may be, the Upa-Sarpanch by the

majority of not less than two-thirds of the total number of the members of the panchayat, the Sarpanch or, as the case may be, the Upa-Sarpanch, shall cease to hold office after a period of three days from the date on which the motion is carried unless he has resigned and the resignation has become effective earlier. Sub-section (3) of section 56 provides that notwithstanding anything contained in the Act or the Rules made thereunder, a Sarpanch or as the case may be, Up-Sarpanch shall not preside over a meeting in which a motion of no confidence is discussed against him, but he shall have a right to speak or otherwise to take part in the proceedings of such a meeting (including the right to vote). Sub-section (5) of section 56 provides that notwithstanding anything contained in section 91 or 95 a meeting of the panchayat for dealing with a motion of no confidence shall be called within a period of fifteen days from the date on which the notice of such motion is received by the Panchayat and if the Sarpanch fails to call such a meeting, the Secretary of the Panchayat shall forthwith make a report thereof to the competent authority and the competent authority shall call a meeting of the panchayat within fifteen days from the date of receipt of the report. Section 56 of the said

Act reads as follows:-

> “56. Motion of no-confidence. (1) Any member who intends to move a motion of no confidence against the Sarpanch or the Upa-Sarpanch may give notice thereof in the prescribed form to the panchayat concerned. If the notice is supported by one half of the total number of member of the panchayat concerned, the motion may be moved.
>
> (2) Where in the case of the Sarpanch or, as the case may be, the Upa-Sarpanch, the motion is carried by the majority of not less than two-thirds of the total number of the members of the panchayat, the Sarpanch, as the case may be, the Upa-Sarpanch, shall cease to hold office after a period of three days from the date on which the motion is carried unless he has resigned and the resignation has become effective earlier; and thereupon the office held by him shall be deemed to have become vacant.
>
> (3) Notwithstanding anything contained in this Act or the rules made thereunder a Sarpanch or, as the case may be, an Upa-Sarpanch, shall not preside over a meeting in which a motion of no confidence is discussed against him, but he shall have a right to speak or otherwise to take part in the proceedings of such a meeting (including the right to vote.)
>
> (4) When the offices of both the Sarpanch and Upa-Sarpanch become vacant simultaneously, such officer

as the Taluka Development Officer may authorise in this behalf shall, pending the election of the Sarpanch, exercise all the powers and perform all the functions and duties of Sarpanch but he shall not have the right to vote in any meetings of the panchayat.

(5)(a) Notwithstanding anything contained in section 91 or 95 a meeting of the panchayat for dealing with a motion of no confidence under this section shall be called within a period of fifteen days from the date on which the notice of such motion is received by the panchayat;

(b) If the Sarpanch fails to call such meeting, the Secretary of the panchayat shall forthwith make a report thereof the competent authority shall call a meeting of the panchayat within a period of fifteen days from the date of the receipts of the report."

10.4 Rule 20 of the Gujarat Panchayats (Procedure Rules) 1997 (hereinafter to be referred to as "the said Rules") provides for a notice of no confidence motion. Rule 20 of the said Rules reads as follows:

"20. Notice of no confidence motion. (1) Any member of a panchayat who desires to move a motion of no confidence against the Sarpanch/President or Upa-Sarpanch/Vice President of the Panchayat, shall give notice thereof to the Secretary in Form-A. Where

the motion of no confidence is to be moved against the Sarpanch/President as well as Upa-Sarpanch/Vice President, two separate notice shall be given. If the notice is given jointly by more than one member, the motion may be moved by any of the members who have assigned the notice. Every such notice shall be supported by at least one-half of the total number of members of the panchayat.

(2) The member giving any notice under sub-rule (1) shall forward therewith three additional copies thereof to the Secretary who shall deliver one copy to the Sarpanch/President, one copy to the Upa-Sarpanch/Vice President and one copy.

(i) to the Taluka Development Officer where the motion relates to the Sarpanch or Up-Sarpanch or
(ii) to the District Development Officer where the motion relates to the President or Vice President of the Taluka Panchayat, or
(iii) to the Development Commissioner where the motion relates to the President or Vice President of a District Panchayat.

Explanation : For the purposes of this rule, if the total number of members of a panchayat is odd, then in calculating the number for the purpose of this rule, a fraction shall be counted as one, that is to say, if the number of member is 31, the member required for supporting the notice so that a motion may be moved shall be 16 and so on.”

Rule 21 of the said Rules, inter alia provides that when the Panchayat takes a decision on any motion of no confidence, the Secretary shall forthwith communicate to the officer to whom a copy of the motion was sent under sub-rule (2) of rule 20, the names of all the members who were present at the meeting at which such decision was taken and the nature of vote given by each member for or against the motion.

10.5 Rule 29 to 35 of the said Rules provide for the manner in which the business is to be conducted during the meeting of the Panchayat. The said rules are reproduced herein-below:

> “29. Conduct of members during meeting. (1) A member deciding to make any observation on any matter before the meeting shall rise in his seat and if called upon by the Presiding Officer, address his remarks to the Presiding Officer. If he is not called upon by the Presiding Officer, he shall resume his seat:
> Provided that the Presiding Officer, may permit any member to address the meeting while sitting.
>
> (2) A member shall confine his speech strictly to: the question before the meeting and shall cease to

make remarks which are held by the Presiding Officer to be irrelevant or offensive,

(3) Members shall not talk amongst themselves in the meeting so as to disturb the proceedings or a member who is speaking.

30. Right of Presiding Officer to address meeting. The Presiding Officer may address the meeting at any stage of a debate.

31. Mover to start debate. After a motion has been placed before the meeting for consideration under rule 26 the mover may speak in support to the motion and the seconder may either follow or reserve his speech for a later stage of the debate thereon.

32. Right of reply. The mover, or if the mover waives his rights, the seconder of a substantive resolution may reply at the conclusion of the debate thereon, but to no other member shall, without express permission of the Presiding Officer speak more than once on the same resolution except for the purpose of making a personal explanation but in such case, no debatable matter; shall be brought forward.

33. Time limits for speech. The Presiding Officer may fix a reasonable time limit within which the mover, the seconder, any any other member shall end his speech.

34. Resolution to be voted on conclusion of debate. (1) The Presiding Officer may, on the conclusion of a debate on a resolution or at any time when the Presiding Officer is satisfied that the resolution has been sufficiently discussed, put the resolution to the vote of the meeting.

(2)(i) When there are one or more amendments to a resolution, the Presiding Officer shall first put to vote the amendment or amendments one by one;
(ii) If all amendments are lost, the Presiding Officer shall put the resolution to vote;
(iii) If any amendment or amendments are carried the Presiding Officer shall put to vote the resolution incorporating the amendment or amendments which have been carried;
(iv) The Presiding Officer may group together amendments which are substantially the same:

Provided that in a group of amendments, the Presiding Officer may give precedence to any amendment which is most comprehensive and that when such amendment is either carried or lost, it shall not be necessary to put to vote, the other amendments in the group.

(3) The resolution with or without an amendment to amendments as finally carried under sub-rule (2) shall be considered to be the decision of the Panchayat.

35. Manner of taking votes - Votes may ordinarily be taken by a show of hands and a member who desires

to give his vote, in favour of a resolution shall raise his hand in favour of that resolution."

11. From the above recording of the statutory provisions, it can be seen that in sub-section (3)of section 56 of the said Act, it is provided that a Sarpanch or, as the case may be, an Upa-Sarpanch (who is facing a no confidence motion) shall not preside over the meeting in which such motion of no confidence is being discussed, but he shall have a right to speak or otherwise to take part in the proceedings of such a meeting including the right to vote. This right to speak or otherwise to take part in the proceedings during such a meeting including the right to vote is a statutorily vested right in favour of the Sarpanch or Upa-Sarpanch who is facing a no confidence motion. From the statutory provisions noted herein-above and the scheme of the said Act, it is necessary to decide whether the said provision is mandatory or directory. In other words, it is necessary to decide whether the denial of a right to a Sarpanch or an Upa-Sarpanch to speak or otherwise to take part in the proceedings of a meeting would vitiate the no confidence motion which was otherwise passed by the requisite two-third majority.

12. Learned advocate Shri Raval appearing for respondent No.6 has pointed out a decision of this Court in the case of Thakore Gandaji v. Indrad Gram Panchayat, 2000 (2) GLR 959 in support of his contention that the right of a Sarpanch or Up-Sarpanch to speak or to otherwise take part in the proceedings of the meeting is not such a right which, if denied, would vitiate the entire proceedings. In the above decision of Thakore Gandaji (supra), the Division Bench of this Court was considering the question of the validity of the provisions of section 56 of the said Act which was challenged by the petitioners therein primarily on the ground that the Sarpanch of the Gram Panchayat who is elected by the people of the village cannot be removed by an elected body of the Panchayat. This challenge was negatived by the Division Bench relying upon decisions of the Hon'ble Supreme Court in the case of Mohanlal Tripathi v. District Magistrate, Rai Barelly & ors., AIR 1993 SC 2042 and in the case of Ram Beti v. District Panchayat, Rajadhakari & Ors., AIR 1998 SC 1222. The ratio laid down in the case of Thakore Gandaji (supra) would not apply to the facts of the present case.

12.1 In the case of Gajanan Narayan Patil v. Dattatraya Waman Patil, AIR 1990 SC 1023, the Hon'ble Supreme Court was pleased to declare the proceedings of a special meeting as illegal in which no confidence motion was passed on the ground that two directors representing the financial institutions as well as the expert nominee (co-opted) were entitled to participate in the said meeting of the Committee and also to vote on the said meeting as regards no confidence motion. It was observed that non service of notice of the said meeting on the aforesaid directors would render the special meeting illegal as there is an infringement of the provisions of the Maharashtra Cooperative Societies Act and the Maharashtra Cooperative Societies Rules, 1961.

13. At this stage, I would like to note some of the judicial pronouncements on the question of interpretation of statute particularly with respect to the word “shall” used by the Legislature and the effect of such an expression to convey whether the provision is mandatory or directory.

13.1 In the decision of R.B.Sugar Co. v. Rampur Municipality, AR 1965 SC 895 the Hon'ble Supreme Court

made the following observations in para 7 of the judgment:

> “The question whether a particular provision of a statute which on the fact of it appears mandatory – inasmuch as it uses the word “shall” as in the present case – or is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.”

13.2 In the case of Lachmi Narain v. Union of India, AIR 1976 SC 714, the Hon'ble Supreme Court made the following observations :

> “66. Section 6(2) as it stood immediately before the impugned notification, requires the State Government to give by Notification in the Official Gazette “not less than 3 months' notice” of its intention to add to or limit from or otherwise amend the Second Schedule. The primary key to the problem whether a statutory provision is mandatory or directory, is the intention of the law-maker as expressed in the law itself. The reason behind the provision may be a further aid to the ascertainment of that intention. If the legislative intent is

expressed clearly and strongly in imperative words, such as the use of 'must' instead of “shall”, that will itself be sufficient to hold the provision to be mandatory, and it will not be necessary to pursue the enquiry further. If the provision is couched in prohibitive or negative language, it can rarely be directory, the use of peremptory language, in a negative form is per se indicative of the intent that the provision is to be mandatory (Crawford, the Construction of Statutes pp. 523-524). Here the language of sub-section (2) of Section 6 is emphatically prohibitive, it commands the Government in unambiguous negative terms that the period of the requisite notice must not be less than three months.”

13.3 In the decision of Govindlal v. Agri. P.M.Committee, AIR 1976 SC 263, the Hon'ble Supreme Court made the following observations in para 13:

“13. Crawford on 'Statutory Construction'(Edn. 1940, Art. 261, p. 516) sets out the following passage from an American case approvingly:" The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one-way or the other." Thus, the governing factor is the meaning and intent of the legislature, which should be gathered not merely from the words used by the legislature but from a variety of other circumstances and considerations. In other words, the use of the word 'shall' or 'may' is not conclusive on the question whether the particular requirement of law is mandatory or directory. But the circumstance that the legislature has used a language of compulsive force is always of great

> relevance and in the absence of anything contrary in the context indicating that a permissive interpretation is permissible, the statute ought to be construed as peremptory. One of the fundamental rules of interpretation is that if the words of a statute are themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature. Shriram v. State of Bom., (1961) 2 SCR 890 at p. 898 = (AIR 1961 SC 674 at pp. 677-678) = (1961) 1 Cri LJ 760 at p. 764."

13.4 In the case of M/s.Rubber House v. M/s.E.N. Industries Pvt. Ltd., AIR 1989 SC 1160, the Hon'ble Supreme Court in para 20 of the said decision observed that the question whether the rules are mandatory or directory has to be adjudged in the light of the intention of the Legislature as disclosed by the object, purpose and scope of the statute. No doubt, if the statute is mandatory the things done not in the manner or form prescribed have no effect or validity, but if it is directory, the non-compliance may not lead to any serious and adverse consequence. In para 31 of the said decision, it was further observed that the word "shall" in its ordinary import is obligatory. However, the word "shall" need not be given connotation in each and every case and the provisions can be interpreted as directory instead of mandatory depending upon the purpose which the legislature intended to achieve as disclosed by the

object, design, purpose and scope of the statute.

13.5 In the case of Mansukhlal Vithaldas Chauhan v. State of Gujarat, AIR 1997 SC 3400, in para 22, the Hon'ble Supreme Court made the following observations :

> “22. Mandamus which is a discretionary remedy under Article 226 of the Constitution is requested to be issued, inter alia, to compel performance of public duties which may be administrative, ministerial or statutory in nature. Statutory duty may be either directory or mandatory. Statutory duties, if they are intended to be mandatory in character, are indicated by the use of the words “shall” or “must”. But this is not conclusive as “shall” and “must” have, some times, being interpreted as “may”. What is determinative of the nature of duty, whether it is obligatory, mandatory or directory, is the scheme of the statute in which the “duty” has been set out. Even if the “Duty” is not set out clearly and specifically in the statute, it may be implied as correlative to a “Right”.”

13.6 In the decision of Nasiruddin v. Sita Ram Agarwal, AIR 2003 SC 1543, the Hon'ble Supreme Court made the following observations:

> “20. It is beyond any cavil that the question as to whether the provision is directory or mandatory would depend upon the language employed therein (See Union of India & ors. v. Filip Tiago De Gama of Vedem Vasco De Gama, (AIR 1990 SC 981 : (1980) Suppl. 2 SCR 336).”

In para 38 of the said decision, the Hon'ble Supreme Court made the following observations :

> “The Court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression 'shall or may' is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the Courts will presume that the intention of the legislature was that the provisions are mandatory in character.”

13.7 In the case of P.T.Rajan v. T.P.M.Sahir, AIR 2003 SC 4603, the Hon'ble Supreme Court made the following observations in para 37 of the judgment:

> “37. A statute as is well-known must be read in the text and context thereof. Whether a statute is directory or mandatory would not be dependent on the user of the words “shall” or “may”. Such a question must be posed and answered having regard to the purpose and object it seeks to achieve.”

14. Based on the above judicial pronouncements, it is necessary to examine whether the provisions of section 56(3) of the said Act which provide that a Sarpanch, or as the case may be, an Upa-Sarpanch though shall not preside over a meeting in which a motion of no confidence is discussed against him, shall have a right to speak or otherwise to take part in the proceedings of the no confidence motion including right to vote; is a mandatory requirement of law or is merely directory so that the proceedings of no confidence motion would not vitiate even if the requirement is not strictly fulfilled.

15. From the above recording of the relevant provisions of the said Act and the said Rules and in particular rules 29 to 35, it can be seen that even in the capacity of a member of the Panchayat, Sarpanch against whom no confidence motion is being conducted would have a right to participate and to speak subject, of course, to the provisions contained in rules 29 to 35 of the said Rules. Section 56(3) of the said Act not only preserves this right, but highlights the aspect that a Sarpanch, or as the case may be, an Up-Sarpanch who is facing no confidence motion though shall not

preside over such a meeting, but he shall have a right to speak or otherwise to take part in the proceedings of such a meeting as also shall have a right to vote. The words "shall have a right to speak or otherwise to take part in the proceedings of such a meeting" have been used by the Legislature advisedly and unless it is found from the attending provisions of the statute that the Legislature intended that such provision should not be mandatory, it is not possible to hold that the requirement is merely directory in nature. A right to address a meeting or otherwise to take part in the proceedings including to vote are statutory rights vested in the Sarpanch or Upa-Sarpanch who is facing a no confidence motion. A no confidence motion has to be tabled and debated before the same can be put to vote. A Sarpanch whose position and reputation are at stake definitely has a right to speak at such a meeting and when denied such a right, prejudice would be caused to him or her, as the case may be. In a democracy when an elected Sarpanch or, as the case may be, an Up-Sarpanch is being sought to be removed through a motion of no confidence and when the provisions of section 56(3) of the said Act specifically provide that a Sarpanch or, as the case may be, Up-Sarpanch who is facing such a no

confidence motion shall have a right to speak, it is not possible to hold that such a requirement is merely directory in nature. The Sarpanch or, as the case may be, Up-Sarpanch, through his persuasive power or logical arguments may be able to prevail upon some of the members present at the meeting to change their mind and persuade them to oppose the no confidence motion. By denying the Sarpanch or, as the case may be, Up-Srapanch an audience altogether, this statutory right is being violated. It is not possible to judge the prejudice that may be caused in an individual case by the denial of such a right. It is also not possible to interpret the provisions of section 56(3) of the said Act keeping in mind an individual fact situation in a given case. It is, therefore, not possible to accept the contention of the learned advocate Shri Raval for respondent No.6 that in the present case when as many as 14 out of 17 members voted in favour of no-confidence motion, no prejudice was caused to the petitioner even if she was denied the right to speak at the meeting and that eventually what matters is the opinion of two-third members of the Panchayat that no confidence motion should be adopted. What would have been the position if the petitioner was permitted to speak and participate in the said meeting is not possible

to predict. Before a no confidence motion could be put to vote, the petitioner had a statutory right to address the meeting. When such a mandatory requirement of law was not followed, all consequential steps of putting the motion to vote and counting of votes and adoption of resolution would automatically fail having no effect or validity.

16. In view of the conclusion that I have reached, namely, that the requirement of section 56(3) of the said Act is mandatory in nature and not merely directory, all consequential steps from the stage of voting of no confidence motion and its adoption by the meeting would be rendered nonest and ineffective, since it is factually concluded in the earlier portion of the judgment that the petitioner was not given an opportunity to speak at the meeting or in any other manner to participate except to vote.

17. In the result, I find that the order passed by the State Government is required to be set aside. The order passed by the Appeal Committee is required to be restored. Pursuant to this direction, the Panchayat shall have to call for a fresh meeting to debate and to

vote on the no confidence motion against the petitioner.

18. In the result, the petition is allowed. The order passed by the State Government on 15.9.2004 is set aside. The order passed by the Appeal Committee on 28th April 2004 is restored. Rule is made absolute to the above extent with no order as to costs.

19. At the request of the learned advocate Shri Raval appearing for respondent No.6, this order shall stand stayed upto 7th December, 2005, despite resistance from the learned advocate for the petitioner.

(Akil Kureshi, J.)

(vjn)